

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, September 23, 2021

Hearing Room

5B

10:00 AM

8:00-000000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

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For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for Judge Theodor C. Albert's Cases" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

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Tentative Ruling:

- NONE LISTED -

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8:19-11633 Timothy M Childress

Chapter 7

Adv#: 8:19-01114 Fleet Logic LLC v. Childress

**#1.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt
Pursuant to 11 USC Sections 523(a)(2), 523(a)(4), and 523(a)(6)
(cont'd from 4-23-20 per court's own mtn 9-24-19)
(rescheduled from 4-30-2020 at 10:00 a.m. per court)
(cont'd from 10-29-20 per order appr. stip. to cont s/c entered 10-06-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-10-22 AT 10:00 A.M.
PER ORDER APPROVING FOURTH STIPULATION FOR ORDER TO
CONTINUE STATUS CONFERENCE AND STAY PROCEEDING
PENDING STATE COURT DETERMINATION OF CLAIMS ENTERED 7-
09-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy M Childress

Represented By
Lauren Rode

Defendant(s):

Timothy M Childress

Pro Se

Plaintiff(s):

Fleet Logic LLC

Represented By
Michael N Nicaastro

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:21-10810 Kenneth C Guziak

Chapter 7

Adv#: 8:21-01030 Melhase v. Guziak

#2.00 STATUS CONFERENCE RE:Complaint Against Adversary Defendant Kenneth C. Guziak To Determine Non-Dischargeability Of Debt Pursuant to 11 U.S.C. § 523(a)(2)(A)
(cont'd from 8-26-21)

Docket 1

Tentative Ruling:

Tentative for 9/23/21:
See #3.

Status Conference continued to:

Deadline for completing discovery: Jan. 1, 2022
Last date for filing pre-trial motions Jan. 31, 2022.
Joint pre-trial order due per local rules.
Pretrial conference: Feb. 10, 2022 @ 10:00AM.
Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days.
One day of mediation to be completed by Jan. 1, 2022.

Tentative for 8/26/21:
Deadline for completing discovery: January 31, 2022
Last date for filing pre-trial motions February 11, 2022.
Joint pre-trial order due per local rules.
Pretrial conference: February 24, 2022 @ 10:00AM

Appearance: required

Party Information

Debtor(s):

Kenneth C Guziak

Represented By

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CONT... Kenneth C Guziak

Chapter 7

Darren G Smith

Defendant(s):

Kenneth C Guziak

Pro Se

Plaintiff(s):

Dan Melhase

Represented By
Jeffrey George Jacobs

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:21-10810 Kenneth C Guziak

Chapter 7

Adv#: 8:21-01030 Melhase v. Guziak

#3.00 Order To Show Cause Why This Complaint Should Not Be Dismissed For Failure To Prosecute RE: Complaint.

Docket 1

Tentative Ruling:

Tentative for 9/23/21:

The court has received the very late response. Why is it late? The parties should familiarize themselves with the rules and hearings protocol pertaining during this pandemic. Visit my portion of the website. Hearings are presumed via ZoomGov unless specific arrangements are made, in advance, as was the case at the first status conference on this matter. The court will accept the explanation...this time...and overlook the very late response. But this as in any court proceeding is a rule-intensive environment and familiarity with the rules is presumed. More indulgences should not be expected. See # 2.

Appearance: required

Party Information

Debtor(s):

Kenneth C Guziak

Represented By
Darren G Smith

Defendant(s):

Kenneth C Guziak

Represented By
Stephen S Smyth
Andrew Edward Smyth

Plaintiff(s):

Dan Melhase

Represented By
Jeffrey George Jacobs

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Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:18-10969 Luminance Recovery Center, LLC

Chapter 7

Adv#: 8:18-01064 Marshack v. Castanon et al

**#4.00 PRE-TRIAL CONFERENCE RE: Complaint For Declaratory Relief Regarding
Property Of The Estate Pursuant To 11 USC § 541
(set from s/c hrg held on 12-5-19)
(cont'd from 8-05-21) [Holding Date]**

Docket 1

Tentative Ruling:

Tentative for 9/23/21:
Continue to October 14, 2021. Appearance: optional

Tentative for 8/5/21:
Continued to September 23, 2021 at 10:00 a.m. Appearance waived.

Tentative for 6/3/21:
Schedule trial about 60 days hence. In person, virtual or hybrid?

Tentative for 12/5/19:
Status conference continued to May 7, 2020 at 10:00AM
Deadline for completing discovery: March 30, 2020
Last date for filing pre-trial motions: April 17, 2020
Pre-trial conference on:
Joint pre-trial order due per local rules.

Tentative for 10/3/19:
See #16. Should the 5/15 scheduling order be revisited?

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CONT... Luminance Recovery Center, LLC

Chapter 7

Party Information

Debtor(s):

Luminance Recovery Center, LLC

Represented By
Jeffrey I Golden
Beth Gaschen

Defendant(s):

Michael Edward Castanon

Represented By
Rhonda Walker
Carlos A De La Paz

BeachPointe Investments, Inc.

Represented By
Evan C Borges

George Bawuah

Represented By
Evan C Borges

Jerry Bolnick

Represented By
Evan C Borges

Jonathan Blau

Represented By
Evan C Borges

Joseph Bolnick

Represented By
Evan C Borges

Maria Castanon

Pro Se

Kenneth Miller

Represented By
Evan C Borges

Peter Van Petten

Represented By
Evan C Borges

Raymond Midley

Represented By
Evan C Borges

Veronica Marfori

Represented By
Evan C Borges

Dennis Hartmann

Represented By

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CONT... Luminance Recovery Center, LLC

Chapter 7

Thomas W. Dressler

Plaintiff(s):

Richard A. Marshack

Represented By
Sharon Oh-Kubisch
Robert S Marticello

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Kyra E Andrassy
Jeffrey I Golden
Beth Gaschen
Matthew Grimshaw

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8:18-10486 Ron S Arad

Chapter 11

Adv#: 8:18-01080 Arad v. DEPARTMENT OF THE TREASURY, INTERNAL REVENUE

#5.00 PRE-TRIAL CONFERENCE RE: Complaint - (1) Authority to Sell Co-Owned Properties; (2) Adequate Protection;(3) Fraud While Acting in a Fiduciary Capacity;(4) Turnover; 5) a Permanent Injunction; (6) Equitable Relief;(7) Declaratory Relief; and (8) an Accounting Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property)), (11 (Recovery of money/property - 542 turnover of property)), (72 (Injunctive relief - other)), (91 (Declaratory judgment))
(set from s/c hrg held 3/3/21)
(cont'd from 8-11-21)

Docket 1

Tentative Ruling:

Tentative for 9/23/21:

Court is unclear as to whether the matter was indeed settled after mediation and if it was not settled, what the issues still in contention are. Would a further mediation clarify things? There is apparently still a need for limited discovery but there seems to be an argument that the deadline has passed. Depending on answers the court will assign a trial date or to further mediation.

Tentative for 8/11/21:

Why no status report? Results of the mediation?

Tentative for 6/2/21:

Apparently the parties are still in mediation. Continue about 60 days.

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Chapter 11

Tentative for 3/3/21:
Status conference continued to:

Deadline for completing discovery: April 15, 2021
Last date for filing pre-trial motions: April 30, 2021
Pre-trial conference on: June 2, 2021 @ 10:00AM
Joint pre-trial order due per local rules.

Tentative for 12/2/20:
Status?

Tentative for 6/24/20:
Would the parties prefer this be set for pretrial conference now, or continued
as a status conference allowing a second attempt at mediation?

Tentative for 2/26/20:
Status? Would ordered mediation help?

Tentative for 12/11/19:
Further status report is needed. For example, IRS is still a defendant.

Tentative for 9/11/19:
Off calendar? See #9

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Chapter 11

Tentative for 9/4/19:

Does #7 resolve this?

Tentative for 3/7/19:

Where's the Joint Pre-Trial Stip and Order? LBR 7016-1(b).

Tentative for 11/1/18:

Deadline for completing discovery: March 7, 2019

Last date for filing pre-trial motions: February 28, 2019

Pre-trial conference on: March 7, 2019

Joint pre-trial order due per local rules.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by January 31, 2019.

Tentative for 8/2/18:

Status conference continued to November 1, 2018 at 10:00 a.m.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by October 15, 2018.

Party Information

Debtor(s):

Ron S Arad

Represented By
G Bryan Brannan

Defendant(s):

DEPARTMENT OF THE

Represented By
Jolene Tanner

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Ron S Arad

UNITED STATES OF AMERICA

Represented By
Jolene Tanner

Chapter 11

Plaintiff(s):

Ron S Arad

Represented By
G Bryan Brannan

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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

**#6.00 PRE-TRIAL CONFERENCE RE: Lexington National Insurance Corporation's Limited Objection To And Motion To Disallow Proof Of Claim No. 65 Filed By Specialized Loan Servicing LLC
(set from obj. to & mtn to disallow proof of clm no. 65 hrg held on 8-11-20)
(cont'd from 7-15-21 per amended order approving joint stip. between lexington national insurance corporation, specialized loan servicing llc, and select portfolio servicing, inc. for extension of deadlines in scheduling order entered 6-04-21)**

Docket 258

***** VACATED *** REASON: CONTINUED TO 9-30-21 AT 10:00 A.M.
PER ORDER APPROVING JOINT STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION, SPECIALIZED
LOAN SERVICING LLC AND DCM-P1, LLC TO CONSOLIDATED
CONTESTED MATTERS AND SET SCHEDULING ORDER ENTERED 6-16-21**

Tentative Ruling:

Tentative for 8/11/20:
Deadline for completing discovery: December 31, 2020.
Last date for filing pre-trial motions: January 14, 2021.
Pre-trial conference on: February 4, 2021 @ 10:00 a.m.
Joint pre-trial Stipulation due per local rules.

Tentative for 6/30/20:
Serious issues are raised in Lexington's reply, joined by the Trustee.
Explanations are required concerning the relationship between the claimant and Mr. Browndorf. Treat as a status conference preliminary to a contested matter/adversary proceeding.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By

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CONT... BP Fisher Law Group, LLP

Chapter 7

Marc C Forsythe

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood

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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

**#7.00 PRE-TRIAL CONFERENCE RE: Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 67 Filed By Select Portfolio Servicing, Inc.
(set from s/c hrg held on 8-11-20)
(cont'd from 7-15-21 per order approving joint stip. between lexington national insurance corporation, specialized loan servicing llc, and select portfolio servicing, inc. for extension of deadlines in scheduling order entered 6-04-21)**

Docket 260

***** VACATED *** REASON: CONTINUED TO 10-14-21 AT 10:00 A.M.
PER ORDER APPROVING JOINT STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND SELECT
PORTFOLIO SERVICING, INC. FOR EXTENSION OF DEADLINES IN
SCHEDULING ORDER ENTERED 7-27-21**

Tentative Ruling:

Tentative for 8/11/20:
Same schedule as in #15.

Tentative for 2/25/20:
See #11

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood

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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

**#8.00 PRE-TRIAL CONFERENCE RE: Select Portfolio Servicing, Inc's Objection to and Motion to Disallow or Subordinate Proof of Claim No. 44 filed by Lexington National Insurance Corporation
(set from s/c hrg. held on 8-11-20)
(cont'd from 7-15-21 per order approving joint stip. between lexington national insurance corporation, specialized loan servicing llc, and select portfolio servicing, inc. for extension of deadlines in scheduling order entered 6-04-21)**

Docket 476

***** VACATED *** REASON: CONTINUED TO 10-14-21 AT 10:00 A.M.
PER ORDER APPROVING JOINT STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND SELECT
PORTFOLIO SERVICING, INC. FOR EXTENSION OF DEADLINES IN
SCHEDULING ORDER ENTERED 7-27-21**

Tentative Ruling:

Tentative for 8/11/20:
Same schedule as in #15.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

Movant(s):

SELECT PORTFOLIO

Represented By
Lauren A Deeb

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood

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8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

**#9.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Non-Dischargeability
Of Debt Based On Fraud And Objecting To Discharge Of Debtors
(cont'd from 7-15-21)**

Docket 1

Tentative Ruling:

Tentative for 9/23/21:
See #10.

Tentative for 7/15/21:
See #10.

Tentative for 7/1/21:
Continue to July 15 @ 11:00AM to coincide with motion for judgment on
pleadings.

Tentative for 4/29/21:
Is it really true that the parties are unable to stipulate to any facts? When will
the discovery dispute be determine? It does not sound like this case is ready
to be set for trial at this point. Should another continuance be given?

Tentative for 3/11/21:
Status?

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Tentative for 1/28/21:

All the deadlines have passed but no significant status report has been received despite several continuances. Status?

Appearance: required

Tentative for 9/12/19:

Deadline for completing discovery: February 1, 2020
Last date for filing pre-trial motions: February 18, 2020
Pre-trial conference on: March 12, 2020 at 10:00AM
Joint pre-trial order due per local rules.

Tentative for 6/6/19:

See # 23 & 24 - Motions to Dismiss

Tentative for 3/28/19:

Deadline for completing discovery: September 30, 2019
Last Date for filing pre-trial motions: October 23, 2019
Pre-trial conference on October 10, 2019 at 10:00am
Joint Pre-trial order due per LBRs.
Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within 10 days.

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By

Carlos F Negrete - INACTIVE -

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Defendant(s):

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

Joint Debtor(s):

Natasha Wosoughkia

Represented By

Carlos F Negrete - INACTIVE -

Plaintiff(s):

BIJAN JON MAHDAVI

Represented By

Craig J Beauchamp

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8:10-26382 Fariborz Wosoughkia

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Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

#10.00 Motion To Strike Defendant's Jury Demand To The Jurisdiction Of This Court
By Defendants, And For Order Imposing Sanctions

Docket 100

Tentative Ruling:

Tentative for 9/23/21:

This is Plaintiff, Bijan Jon Mahdavi's ("Plaintiff") motion to strike defendants Fariborz and Natasha Wasoughkia's ("Defendants") jury demand, and to oppose any challenge to the jurisdiction of this court, and for sanctions. Defendants oppose the motion.

Plaintiff's first amended complaint contains four causes of action:

- 1) A determination of dischargeability based on fraud, fraudulent pretense, and fraudulent misrepresentation pursuant to 11 U.S.C. § 523(a)(2)(A);
- 2) A determination of dischargeability for failure to list Plaintiff's debt and failure to provide notice to Plaintiff pursuant to 11 U.S.C. §523(a)(3);
- 3) A determination of dischargeability pursuant to 11 U.S.C. §523(a)(2)(B) based on Defendants' providing Plaintiff with a false promissory note; and
- 4) Objection to Defendants' discharge pursuant to 11 U.S.C. §727(c)(1) & (2) based on Defendants' failure to list all assets and failure to list insider payments.

Somewhat unusually, Plaintiff's motion does not include a recitation of underlying facts, and neither does Defendants' opposition. However, as this is

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purely a procedural motion it is likely that the underlying facts are not as important.

1. Legal Standards

In determining whether a party is entitled to a trial by jury under the Seventh Amendment, a court must first compare the statutory action to 18th century actions brought in the courts of England prior to the merger of the courts of law and equity, and second, examine the remedy sought and determine whether it is legal or equitable in nature. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42 (1989). The second question is more important than the first. *Id.* "If, on balance, these two factors indicate that a party is entitled to a jury trial under the Seventh Amendment, we must decide whether Congress may assign and has assigned resolution of the relevant claim to a non-Article III adjudicative body that does not use a jury as factfinder." *Id.* "If there is a Seventh Amendment right to jury trial in the action, the court must determine whether the demand for jury trial was timely made pursuant to Fed. R. Civ. P. 38(b)." *In re Marshland Dev., Inc.*, 129 B.R. 626, 629 (Bankr. N.D. Cal. 1991). Issues of dischargeability are historically equitable in nature. *In re Hooper*, 112 B.R. 1009, 1012 (9th Cir. BAP 1990). There is no right to a jury trial when... only non-dischargeability of a claim, and not its validity or liquidation, is at issue. *Davis-Rice v. Clements (In re Davis-Rice)*, 2008 WL 8444807 at *4 (9th Cir. BAP 2008). "In addition, Fed. R.Civ.P. 38(b), made applicable by Rule 9015, requires that a demand for a trial by jury of any issue triable of right by a jury be made not later than [14] days after the service of the last pleading directed to such issue.... As specified by Fed.R.Civ P. 38(d), the failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury." *Id.* (internal quotations omitted)

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2. Is Defendant Entitled to A Jury Trial?

Although Plaintiff's motion provides exhaustive reasons to strike the jury demand, the court need only focus on two questions: (1) is there an inherent right to a jury trial in cases such as this adversary proceeding? and (2) was a jury trial timely and properly demanded by Defendants? The answer to both of those questions is "no," which is fatal to Defendants' purported jury demand.

Plaintiff argues that this adversary proceeding is based on causes of action relating only to dischargeability, which as the above cited authorities note, are historically equitable in nature. As the BAP observed in *Davis-Rice*, there is no right to a jury trial when only dischargeability is at issue. However, Plaintiff's complaint also makes a demand for money damages in an amount of not less than \$235,000. So, this adversary proceeding is not solely about issues of dischargeability. Certainly, a claim for money damages based on the conduct alleged in the first amended complaint would be typical of claims brought under English common law. Thus, this adversary proceeding seeks remedies at both law and equity, but the four articulated causes of action are all creatures of the Bankruptcy Code, and the demand for money is clearly only an adjunct to the dischargeability question. The prayer for damages only comes in the conclusion of the first amended complaint. Thus, not unlike many such complaints this adversary proceeding is primarily, if not solely, one of equity making it unlikely that a right to a jury trial exists in the matter.

However, even if a right to a jury trial existed, a demand for a jury trial would still have needed to have been timely and properly made. Plaintiff argues that Defendant failed to make such a timely and proper demand. Defendants assert that they made a demand for a jury trial and have always maintained that position. Defendants assert that they reaffirmed such a demand in open court as recently as July 1. Plaintiff argues that, even if the court were to take Defendants' position seriously, it would still be deficient because it does not comply with the requirements of Rule 38(d), which

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requires that such a demand be served and filed. To similar effect is LBR 9015-2 and Fed R. Bankr. P. 9015. A comment made by Defendants in open court well after the deadline would not comply with Rule 38(d), the Federal Rule of Bankruptcy Procedure or the LBRs, and is not effective. Plaintiff asserts correctly that, were the court to consider Defendants' remark in open court sufficient, Plaintiff would effectively be deprived of due process in that he would be denied the opportunity to challenge the jury demand. Plaintiff also argues that prior to August 26, 2021, Defendant never made a jury demand, and certainly not within 14 days of service of any document that might be considered the last pleading directed to the issue. Defendants did not include a jury demand in their answer to the first amended complaint. It is also noteworthy that, at the time the answer to the first amended complaint was filed, Defendants were represented by counsel.

For their part, Defendants offer nothing in their opposition to rebut Plaintiff's assertions. They simply claim that they always demanded a jury trial, but do not direct the court to where in the record such demands were made, other than in the July 1, 2021 hearing where Defendants orally requested a jury trial. However, as mentioned above, requesting a jury trial orally in open court, and perhaps nowhere else, would not comply with any of the rules, making such a demand ineffective and a waiver of such a right.

Defendants make much of the fact that they are now *pro se* and believe they are being railroaded and deprived of their constitutional right to a jury trial as guaranteed under the Seventh Amendment. However, as the authorities above show, that right is not absolute and can be waived. Proceeding *in pro se* has obvious attendant risks. Plaintiff has put forth several compelling arguments that there is no right to a jury trial in this adversary proceeding, and even if there were, Defendants have likely waived that right by failing to comply with the relevant Federal Rules. Defendant has put forth no compelling counterarguments or evidence. Proceeding *pro se* does not exempt one from respecting the rules of procedure. Additionally, the court is neither required nor disposed to comb through the record searching

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for an alleged filing where a jury demand was unequivocally made then properly filed and served.

Defendants also claim that they were untimely served with this motion as they were served by mail and, thus did not have the usual time to respond. Plaintiff maintains that service was both timely and proper. Giving Defendants the benefit of the doubt, it is unclear how Defendants were prejudiced by the alleged relatively minor reduction of time to respond. With a few extra days, would Defendants have been able to produce documentary evidence proving that they timely demanded a jury trial in compliance with Rule 38? The court is skeptical considering that apparently no effort was made to put forth any such evidence or give the court some reason to afford more time for Defendants to find such evidence.

The jury trial issue is an inherently difficult area of law and as Defendants are in *pro se*, issuing sanctions would seem unnecessarily harsh .

On the issue of jurisdiction, Defendants did not make any argument in the opposition that this court does not have jurisdiction or has been deprived of jurisdiction. Defendants are also the Debtors who filed a voluntary bankruptcy petition, and in doing so, submitted to the jurisdiction of this court. However, as noted, this court's jurisdiction does not seem to be at issue.

Grant.

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By

Carlos F Negrete - INACTIVE -

Defendant(s):

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

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Joint Debtor(s):

Natasha Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Plaintiff(s):

BIJAN JON MAHDAVI

Represented By
Craig J Beauchamp

Trustee(s):

Richard A Marshack (TR)

Represented By
Michael G Spector

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8:19-14912 Igor Shabanets

Chapter 11

Adv#: 8:20-01002 Remares Global, LLC v. Olga Shabanets, as trustee of the 2012 Irrevocable

**#11.00 PRE-TRIAL CONFERENCE RE: Notice of Removal of Civil Action to United States Bankruptcy Court
(set from 5-13-20 s/c hrg held)
(cont'd from 7-08-21)**

Docket 1

Tentative Ruling:

Tentative for 9/23/21:
Standstill remains to accommodate a settlement?

Tentative for 7/8/21:
Continue to coincide with hearing on summary judgment, August?

Tentative for 4/29/21:
See ## 17 and 18.

Tentative for 4/1/21:
Continue to April 29, 2021 @ 2:00 p.m. to coincide with summary judgment motion.

Tentative for 2/25/21:
What is status of stipulation to consolidate adversary proceedings? Continue SC about 30 days for that to occur.

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Chapter 11

Tentative for 5/13/20:

Deadline for completing discovery: Dec. 11, 2020

Last date for filing pre-trial motions: Jan. 25, 2021

Pre-trial conference on: Feb. 18, 2021 @ 10 a.m.

Joint pre-trial order due per local rules.

Refer to mediation. Order appointing mediator to be lodged by n/a within n/a days.

One day of mediation to be completed by n/a.

Tentative for 2/27/20:

Deadline for completing discovery: August 1, 2020

Last date for filing pre-trial motions: August 24, 2020

Pre-trial conference on: September 10, 2020 at 10:00AM

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Olga Shabanets, as trustee of the

Pro Se

Olga Shabanets

Pro Se

Igor Shabanets

Pro Se

Merrill Lynch, Pierce, Fenner &

Pro Se

Plaintiff(s):

Remares Global, LLC

Represented By
Bob Benjy

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:
Adv#: 8:98-01650 Laguardia v. Tamura

Chapter 0

#12.00 Laguardia's Motion For Civil Contempt And For Order To Compel Dayle M. Tamura's Attendance At Debtor Examination And Request For Monetary Sanctions Of \$1,670.30

Docket 394

Tentative Ruling:

Tentative for 9/23/21:

It appears that the debtor has relapsed into a non-cooperation mode. The court has in past shown patience but since we have no response to this motion, and no appearance, we cannot tell why she has not cooperated with the post judgment exam order.

Given her *pro se* status the court will confine the sanction to actual costs of \$1,670 at this time. The court will hear argument as to whether more drastic steps are necessary or advisable going forward.

Appearance: required

Party Information

Defendant(s):

Dayle Momi Tamura

Represented By
Stephen D Johnson

Plaintiff(s):

James Laguardia

Represented By
Eric Ridley
Gordon A Petersen

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Chapter 0

Adv#: 8:98-01650 Laguardia v. Tamura

#13.00 Motion For Civil Contempt And To Order Brookhaven Pet Hospital, LLC's
Attendance At Third-Party Examination

Docket 397

Tentative Ruling:

Tentative for 9/23/21:
Service was apparently delayed (September 16?) so it would seem a
continuance as to Brookhaven is prudent.

Party Information

Defendant(s):

Dayle Momi Tamura

Represented By
Stephen D Johnson

Movant(s):

James Laguardia

Represented By
Eric Ridley
Gordon A Petersen

Plaintiff(s):

James Laguardia

Represented By
Eric Ridley
Gordon A Petersen

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8:18-10762 Jack Richard Finnegan

Chapter 7

Adv#: 8:21-01056 United States Trustee v. Finnegan

#14.00 Order To Show Cause On Memorandum Of Points And Authorizing [SIC] In Support Of Defendant Jack R. Finnegan's Motion To Dismiss Plaintiff's Complaint Pursuant To FRCB Rules 12(b) 12(b)(1), 12(b)(2), 12(b)(3), Rule 12(b)(4)-(5), 12(b)(6)

Docket 1

Tentative Ruling:

Tentative for 9/23/21:

This is debtor, Jack Richard Finnegan's ("Debtor") motion to dismiss the U.S. Trustee's ("Trustee's") adversary complaint. The motion was improperly filed and noticed (never made the docket?), but the court, knowing all of that, has set Debtor's motion for hearing despite the numerous procedural infirmities. The motion, oddly enough, only appears as Exhibit A to the Trustee's Reply.

Trustee's complaint contains a single cause of action objecting to Debtor's discharge under 11 U.S.C. section 727(a)(6)(A), which states: "the court shall grant the debtor a discharge unless - (6) the debtor has refused, in the case- (A) to obey any lawful order of the court, other than an order to respond to a material question or to testify"

Trustee's complaint specifically alleges that both the Chapter 7 Trustee and the United States Trustee, pursuant to validly entered lawful court orders attempted, on numerous occasions, to examine the Debtor concerning his assets and liabilities. However, the Debtor, after being duly served and given an opportunity to contest the orders compelling his appearance and ordering him to produce documents, has steadfastly refused to comply with these lawful court orders, and has refused to produce documents or appear for

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examination. The complaint asserts that, most recently, on April 9, 2021, Trustee filed a motion for an order requiring the Debtor to produce documents and appear for examination. On April 13, 2021, an order was entered granting the U.S. Trustee's Motion and ordering the Debtor to produce documents and appear for examination. The Debtor was duly served with a copy of the order. On April 22, 2021, the Debtor filed and Objection to the Motion. On May 6, 2021, the United States Trustee filed his reply and requested that the Debtor's objection be set down for hearing. On June 8, 2021, at 11:00 a.m. a hearing was held on Debtor's Objection. The Debtor did not appear at the hearing. Subsequently thereafter, and on June 14, 2021, the Court entered an order overruling the Debtor's Objection and issued an Order compelling the Debtor to appear for examination on July 9, 2021 at 11:00 a.m., and to produce documents for inspection on June 29, 2021 by 4:00 p.m. The Debtor failed to produce documents by the June 29, 2021 deadline and the Debtor never appeared for examination on July 9, 2021 at 11:00 a.m. To date no documents have been produced by the Debtor.

Debtor's motion makes little sense and is a substantive disaster. First, he claims that this is not a core proceeding. Trustee persuasively argues that the authority of bankruptcy courts relates primarily to issues arising under Title 11 of the United States Bankruptcy Code. See 28 USC§1334(b). Matters relating to objections to discharge clearly qualify, as in fact discharge does not exist outside of bankruptcy law.

Debtor next asserts that the complaint does not comply with certain technical requirements such as failure to sign the cover sheet, failure to list the case number on the caption sheet, and failure to affix the correct chapter of this case. Trustee argues that the cover sheet is plainly filled out correctly and completely, and that the matter number is assigned by the court clerk after the complaint is filed. Again, Trustee is correct in his assertions, but even if there were more to it, such objections would not carry the day under Rule 12 as failure to state a claim.

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Debtor next argues that the complaint is the product of fraud and deceit, and that Trustee curiously has no standing to file such a complaint. Trustee asserts that his standing is conferred by 11 U.S.C. §307, which states that the United States Trustee may raise and may appear and be heard on any issue in any case or proceeding under this title . . . The complaint certainly falls within the purview of the Trustee's rights and responsibilities.

Debtor next argues that the complaint fails to state a claim upon which relief can be granted pursuant to FRCP 12(b)(6) and argues that the motion falls short of complying with the *Twombly/Iqbal* pleading standards, but he offers no substantive analysis to support this assertion. Rather, the allegation offered in the complaint seems very straightforward and more than plausible, i.e., failure to obey court order(s).

FRCP 12(b)(6) requires a court to consider whether a complaint fails to state a claim upon which relief may be granted. When considering a motion under FRCP 12(b)(6), a court takes all the allegations of material fact as true and construes them in the light most favorable to the nonmoving party. *Parks School of Business v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). A complaint should not be dismissed unless a plaintiff could prove no set of facts in support of his claim that would entitle him to relief. *Id.* Motions to dismiss are viewed with disfavor in the federal courts because of the basic precept that the primary objective of the law is to obtain a determination of the merits of a claim. *Rennie & Laughlin, Inc. v. Chrysler Corporation*, 242 F.2d 208, 213 (9th Cir. 1957). There are cases that justify, or compel, granting a motion to dismiss. The line between totally unmeritorious claims and others must be carved out case by case by the judgment of trial judges, and that judgment should be exercised cautiously on such a motion. *Id.*

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do."

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Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 554-556, 127 S. Ct. 1955, 1964-65 (2007) A complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, _ U.S._, 129 S. Ct. 1937, 1949 (2009) citing *Twombly*. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.* The tenet that a court must accept as true all factual allegations is not applicable to legal conclusions. *Id.* Threadbare recitals of elements supported by conclusory statements is not sufficient. *Id.*

As demonstrated above, Trustee's complaint contains sufficient factual allegations, taken as true and viewed in the light most favorable to Trustee as the nonmovant, that would entitle him to the relief sought. Contrary to Debtor's assertions, the complaint is not merely a collection of factual and legal conclusions, but is a well-organized, succinct, and detailed complaint that adequately apprises Debtor of the allegations he must defend against.

In sum, Debtor's motion should be denied. Debtor's disastrous motion shows misunderstanding of or, more likely, lack respect for the Federal Rules of Civil Procedure. Not surprisingly, he is proceeding *pro se*, and as such, is unlikely to be able to renew his motion with anything close to the basic requirements for supporting a motion of this sort. Thus, given Debtor's well-documented and colorful history in his dealings with nearly everyone involved in the bankruptcy process, it seems unlikely (regrettably) that Debtor will obtain counsel to assist him in re-filing this motion in a more appropriate fashion. Still, Debtor should be given the opportunity to do so, however unlikely it might be. Debtor should be warned that another motion of this sort that is excruciatingly deficient and largely uncoupled from reality represents a clear waste of judicial resources, something courts do not look favorably upon.

Deny.

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Party Information

Debtor(s):

Jack Richard Finnegan

Pro Se

Defendant(s):

Jack Richard Finnegan

Pro Se

Plaintiff(s):

United States Trustee

Represented By
Frank Cadigan

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Laila Masud